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LETTER DATED 3 DECEMBER 1991 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith, for the attention of the members of the Security Council, the following information.

The Governing Council of the United Nations Compensation Commission held its third session from 25 to 29 November 1991.

As decided at its second session, its work was divided into plenary meetings and meetings of Working Group A (dealing with criteria for the expedited processing of urgent claims and additional categories of claims) and Working Group B (dealing with arrangements for ensuring that payments are made to the Compensation Fund).

At its 16th plenary meeting, held on 25 November, the Council heard the report of the Executive Secretary on the activities performed by the secretariat since the second session of the Council. At the same meeting, it agreed to create an option permitting individuals filing claims for departure from Iraq or Kuwait (claim form A) to receive up to US$ 4,000 per person (instead of US$ 2,500) and up to US$ 8,000 per family (instead of US$ 5,000) under the condition that the claimant and his or her family members agree not to file claims under any other form or category.

At its 18th meeting, held on 28 November, the Council:

(a) Decided that the period within which all form A, B and C claims must be submitted by Governments to the Commission will extend for 18 months from the date that the forms are made available. It also decided to remind Governments of the 2 August 1991 criteria (see S/22885, annex II), in which the Governing Council encouraged the submission of such claims within six months from the date on which the Executive Secretary circulates to the Governments the claim forms and authorized the Commission to give consideration to such claims;

(b) Approved the criteria for three additional claims categories: claims by individuals not filed under expedited claims A, B and C, claims of corporations and other legal entities and claims of Governments and international organizations. The Council may provide further guidance with regard to the interpretation and application of paragraph 9 of the criteria for corporations and other legal entities relating to embargo losses in the light of a study on "lost profits" to be prepared by the secretariat for the next session of the Governing Council. In addition, paragraph 11 of the criteria for processing claims of corporations and other entities has been temporarily reserved by two members of the Council (S/AC.26/1991/7);

(c) Agreed that a ceiling for compensation for mental pain and anguish be established, the amount of which will be determined on the basis of additional information on the number of possible claimants, to be submitted by the secretariat at the next meeting of the Council;

(d) Accepted a recommendation made by the Executive Secretary to enter into formal contacts with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for the preparation and submission of consolidated claims on behalf of some of the persons who are not in a position to have their claims submitted by a Government.

The Governing Council also requested the secretariat (a) to provide information relating to funds for payment of oil and oil products exported by Iraq before 3 April 1991 that have been deposited in blocked accounts or otherwise not received by Iraq and an analysis of the legal issues related to obtaining the percentage deduction with respect to such funds; and (b) report on "loss of profits" in connection with the ongoing discussion on embargo losses.

Representatives of Kuwait, Pakistan and Iraq expressed their wish to address the Governing Council at its third session and, in accordance with paragraph 5 of the Guidelines for the conduct of its work, the Council invited them to do so at its 16th and 18th plenary meetings held on 25 and 29 November, respectively.

The next session of the Governing Council has been scheduled for 20 to 24 January 1992.

(Signed) Philippe J. BERG
President
Governing Council
United Nations Compensation Commission

Annex

Decision taken by the Governing Council of the United Nations Compensation Commission during its third session, at its 18th meeting, held on 28 November 1991

Criteria for additional categories of claims

I. CRITERIA FOR PROCESSING OF CLAIMS OF INDIVIDUALS NOT OTHERWISE COVERED

1. The following criteria will govern the submission of all claims of individuals not filed under the criteria adopted by the Governing Council on 2 August 1991, pursuant to Security Council resolution 687 (1991).

2. The following criteria are not intended to resolve every issue that may arise with respect to these claims. Rather, they are intended to provide sufficient guidance to enable Governments to prepare consolidated claims submissions.

3. The Commission will process the claims as expeditiously as possible. While decisions on the precise method of processing these claims will be made at a later stage, the following steps are contemplated. The secretariat will make a preliminary assessment of the claims to determine whether they meet the formal requirements established by the Governing Council. The claims would then be submitted to a panel or panels of Commissioners for review within a set time-limit. The Commissioners would be instructed to utilize different procedures appropriate to the character, amount and subject-matter of particular types of claims. In so far as possible, claims with significant common legal or factual issues should be processed together. The Commissioners would be asked to report to the Council on the claims received and the amount recommended for the claims submitted by each Government. The Council would then decide on the total amount to be allocated to each Government. The Council may decide to refer unusually large or complex claims to panels of Commissioners for detailed review, possibly involving additional written submissions and oral proceedings. In such a case, the individual would be allowed to present his or her case directly to the panel.

4. As contributions are made to the Fund, the Council will allocate those funds among the various categories of claims. If resources of the Fund are insufficient with respect to all claims processed to date, pro rata payments would be made to Governments periodically as funds become available. The Council will decide on the priority for payment of various categories of claims.

5. Claims may be submitted under this category for the loss of earnings or profits; the Commission will consider at a later time the circumstances in which such claims may be admitted, the amounts to be awarded and the limits to be imposed thereon.

Claims covered

6. These payments are available with respect to any direct loss, damage or injury (including death) to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

7. These payments are available with respect to individuals who claim losses in excess of those compensable under claim forms B or C. These payments are also available with respect to individuals who have chosen not to file under claim form A, B or C because their losses exceed $100,000. In addition, these payments are available to reimburse payments made or relief provided by individuals to others, for example to employees or to others pursuant to contractual obligations, for losses covered by any of the criteria adopted by the Council.

8. Since these claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss.

9. Direct losses as a result of Iraq's unlawful invasion and occupation of Kuwait are eligible for compensation. Compensation will not be provided for losses suffered as a result of the trade embargo and related measures. Further guidance will be provided on the interpretation and application of this paragraph.

10. Any compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered.

Submission of claims

11. Claims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State.

12. Claims will be submitted by Governments. Each Government may submit claims on behalf of its nationals and may in its discretion also submit the claims of other persons resident in its territory. In addition, the Council may request an appropriate person, authority or body to submit claims on behalf of persons who are not in a position to have their claims submitted by a Government.

13. Each consolidated claim must include:

(a) For each separate claim, a signed statement by each individual covered containing:

(i) His or her name and address and any passport number or other identifying national number;

(ii) A description of and documents evidencing the amount, type and reason for each element of the loss;

(iii) Identification of any compensation, whether in funds or in kind, already received from any source for the claim asserted;

(iv) His or her affirmation that the foregoing information is correct and that no other claim for the same loss has been submitted to the Commission;

(v) A copy of any previously submitted individual claim;

(b) The affirmation of the Government submitting the claim that, to the best of the information available to it, the individuals in question are its nationals or residents, and the affirmation of the Government or of the person, authority or body as referred to in paragraph 12 above that it has no reason to believe that the information stated is incorrect.

14. The Executive Secretary (or a Commissioner) will prepare and the Executive Secretary will distribute a standard form for submission of these claims, incorporating the above elements in a clear and concise manner. Except as may otherwise be agreed between the Executive Secretary and the Government in question, claims will be submitted to the Executive Secretary by Governments or by persons, authorities or bodies as referred to in paragraph 12 above on the standard form and must include the information in an official language of the United Nations. Each Government may adopt such procedures as it finds appropriate in preparing its claims. The Executive Secretary (or a Commissioner) will be available to answer questions or provide assistance to any Governments which may request it.

15. Governments must submit all claims on behalf of individuals within one year of the date on which the Executive Secretary circulates these claims forms. The Council encourages the submission of such claims within six months from the date on which the Executive Secretary circulates to Governments the claims forms; and the Commission will thereupon give consideration to such claims as provided herein.

II. CRITERIA FOR PROCESSING CLAIMS OF CORPORATIONS AND OTHER ENTITIES

1. The following criteria will govern the submission of claims of corporations, other private legal entities and public-sector enterprises (hereinafter referred to as "corporations and other entities") pursuant to Security Council resolution 687 (1991).

2. The following criteria are not intended to resolve every issue that may arise with respect to these claims. Rather, they are intended to provide sufficient guidance to enable Governments to prepare consolidated claims submissions.

3. The Commission will process the claims as expeditiously as possible. While decisions on the precise method of processing these claims will be made at a later stage, the following steps are contemplated. The secretariat will make a preliminary assessment of the claims to determine whether they meet the formal requirements established by the Governing Council. The claims would then be submitted to a panel or panels of Commissioners for review within a set time-limit. The Commissioners would be instructed to utilize different procedures appropriate to the character, amount and subject-matter of particular types of claims. In so far as possible, claims with significant common legal or factual issues should be processed together. The Commissioners would be asked to report to the Council on the claims received and the amount recommended for the claims submitted by each Government. The Council would then decide on the total amount to be allocated to each Government. The Council may decide to refer unusually large or complex claims to panels of Commissioners for detailed review, possibly involving additional written submissions and oral proceedings. In such a case, the entity would be allowed to present its case directly to the panel.

4. As contributions are made to the Fund, the Council will allocate those funds among the various categories of claims. If resources of the Fund are insufficient with respect to all claims processed to date, pro rata payments would be made to Governments periodically as funds become available. The Council will decide on the priority for payment of various categories of claims.

5. Claims may be submitted under this category for the loss of earnings or profits; the Commission will consider at a later time the circumstances under which such claims may be admitted, the amounts to be awarded and the limits to be imposed thereon.

Claims covered

6. These payments are available with respect to any direct loss, damage or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

7. These payments are available to reimburse payments made or relief provided by corporations or other entities to others, for example to employees or to others pursuant to contractual obligations, for losses covered by any of the criteria adopted by the Council.

8. Since these claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss.

9. Direct losses as a result of Iraq's unlawful invasion and occupation of Kuwait are eligible for compensation. Compensation will not be provided for losses suffered as a result of the trade embargo and related measures. Further guidance will be provided on the interpretation and application of this paragraph.

10. Any compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered.

Submission of claims

[11. Each Government may submit claims on behalf of corporations or other entities that, on the date on which the claim arose, were incorporated or organized under its law. Claims may be submitted on behalf of a corporation or other entity by only one Government. A corporation or other entity would be required to request the State of its incorporation or organization to submit its claim to the Commission. In the case of a corporation or other private legal entity whose State of incorporation or organization fails to submit such claims falling within the applicable criteria within the deadline established in paragraph 14 below, the corporation or other private legal

entity may itself make a claim to the Commission within three months thereafter. It must submit at the same time an explanation as to why its claim is not being submitted by a Government, together with the relevant information specified in paragraph 12 below. In such a case, any award of the Commission will be paid directly to the corporation or other private legal entity.]

12. Each consolidated claim must include:

(a) For each separate claim, a signed statement by an authorized official of each corporation or other entity covered containing:

(i) Documents evidencing the name, address and place of incorporation or organization of the entity;

(ii) A general description of the legal structure of the entity;

(iii) A description of and documents evidencing the amount, type and reason for each element of the loss;

(iv) Identification of any compensation, whether in funds or in kind, already received from any source for the claim asserted;

(v) His or her name and address and affirmation that the foregoing information is correct and that no other claim for the same loss has been submitted to the Commission;

(b) The affirmation of the Government submitting the claim that, to the best of the information available to it, the entities in question are incorporated or organized under its law and the affirmation of the Government that it has no reason to believe that the information stated is incorrect.

13. The Executive Secretary (or a Commissioner) will prepare and the Executive Secretary will distribute a standard form for submission of these claims, incorporating the above elements in a clear and concise manner. Except as may otherwise be agreed between the Executive Secretary and the Government in question, claims will be submitted to the Executive Secretary by Governments on the standard form and must include the information in an official language of the United Nations. Each Government may adopt such procedures as it finds appropriate in preparing its claims. The Executive Secretary (or a Commissioner) will be available to answer questions or provide assistance to any Governments which may request it.

14. Governments must submit all claims on behalf of corporations or other entities within one year of the date the Executive Secretary circulates the claims forms. The Council encourages the submission of such claims within six months from the date on which the Executive Secretary circulates to Governments the claims forms; and the Commission will thereupon give consideration to such claims as provided herein.

III. CRITERIA FOR PROCESSING CLAIMS OF GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

1. The following criteria will govern the submission of claims of Governments and international organizations pursuant to Security Council resolution 687 (1991). Each Government will submit claims of its own and those of its political subdivisions, or any agency, ministry, instrumentality or entity controlled by it.

2. The following criteria are not intended to resolve every issue that may arise with respect to these claims. Rather, they are intended to provide sufficient guidance to enable Governments and international organizations to prepare consolidated claims submissions.

3. The Commission will process the claims as expeditiously as possible. While decisions on the precise method of processing these claims will be made at a later stage, the following steps are contemplated. The Secretariat will make a preliminary assessment of the claims to determine whether they meet the formal requirements established by the Governing Council. The claims would then be submitted to a panel or panels of Commissioners for review within a set time-limit. The Commissioners would be instructed to utilize different procedures appropriate to the character, amount and subject-matter of particular types of claims. In so far as possible, claims with significant common legal or factual issues should be processed together. The Commissioners would be asked to report to the Council on the claims received and the amount recommended for the claims submitted by each Government. The Council would then decide on the total amount to be allocated to each Government. The Council may decide to refer unusually large or complex claims to panels of Commissioners for detailed review, possibly involving additional written submissions and oral proceedings. In such a case, when an international organization is involved, it would be allowed to present its case directly to the panel.

4. As contributions are made to the Fund, the Council will allocate those funds among the various categories of claims. If resources of the Fund are insufficient with respect to all claims processed to date, pro rata payments would be made to Governments periodically as funds become available. The Council will decide on the priority for payment of various categories of claims.

Claims covered

5. These payments are available with respect to any direct loss, damage or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

6. These payments are available with respect to direct environmental damage and the depletion of natural resources as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include losses or expenses resulting from:

(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil-fires and stemming the flow of oil in coastal and international waters;

(b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;

(c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;

(d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage; and

(e) Depletion of or damage to natural resources.

7. These payments will include loss of or damage to property of a Government, as well as losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait. These payments are also available to reimburse payments made or relief provided by Governments or international organizations to others, for example to nationals, residents or employees or to others pursuant to contractual obligations, for losses covered by any of the criteria adopted by the Council.

8. Since these claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss.

9. Direct losses as a result of Iraq's unlawful invasion and occupation of Kuwait are eligible for compensation. Compensation will not be provided for losses suffered as a result of the trade embargo and related measures. Further guidance will be provided on the interpretation and application of this paragraph.

10. Any compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered.

Submission of claims

11. Each consolidated claim must include:

(a) For each separate claim, a signed statement by an authorized official of the Government or international organization containing:

(i) His or her name and address, and government agency instrumentality or ministry or controlled entity or the international organization with which associated;

(ii) A description of and documents evidencing the amount, type and reason for each element of the loss;

(iii) Identification of any compensation, whether in funds or in kind, already received from any source for the claim asserted;

(iv) His or her affirmation that the foregoing information is correct and that no other claim for the same loss has been submitted to the Commission;

(b) The affirmation of the Government or international organization submitting the consolidated claim that to the best of the information available to it, it has no reason to believe that the information stated is incorrect.

12. The Executive Secretary (or a Commissioner) will prepare and the Executive Secretary will distribute a standard form for submission of claims, incorporating the above elements in a clear and concise manner. Except as may otherwise be agreed between the Executive Secretary and the Government or international organization in question, claims will be submitted to the Executive Secretary on the standard form and must include the information in an official language of the United Nations. The Executive Secretary (or a Commissioner) will be available to answer questions or provide assistance to any Governments or international organizations which may request it.

13. Governments and international organizations must submit all claims within one year of the date on which the Executive Secretary circulates the standard form. The Council encourages the submission of such claims within six months from the date on which the Executive Secretary circulates to Governments and international organizations the claims forms; and the Commission will thereupon give consideration to such claims as provided herein.